

field office will inform the applicant. If additional information is necessary to process the application, the applicant will be notified. CBP requests for information not submitted with the application or for additional explanation of details will cause a delay in the application approval and certification of applicants and may result in the suspension of the application approval and certification process until the requested information is received by CBP.

(2) *Approval and certification.* If, upon review, CBP determines that the application should be approved and that certification should be granted, the Director of the Charlotte regulatory audit field office will issue the certification with all the applicable conditions stated therein.

(d) *Alternatives to penalties*—(1) *General.* If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, CBP will, in lieu of a monetary penalty provided for in §163.6(b), issue a written notice of violation to the person as described in paragraph (d)(2) of this section, provided that the certified participant is generally in compliance with the procedures and requirements of the program and provided that the violation was not a willful violation and was not a repeat violation. A willful failure to produce demanded entry records or repeated failures to produce demanded entry records may result in the issuance of penalties under §163.6(b) and removal of certification under the program (see §163.13) until corrective action satisfactory to CBP is taken.

(2) *Contents of notice.* A notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein must:

- (i) State that the recordkeeper has violated the recordkeeping requirements;
- (ii) Identify the record or information which was demanded and not produced;

(iii) Warn the recordkeeper that future failures to produce demanded entry records or information contained therein may result in the imposition of monetary penalties and could result in the removal of the recordkeeper from the Recordkeeping Compliance Program.

(3) *Response to notice.* Within a reasonable time after receiving written notice under paragraph (d)(1) of this section, the recordkeeper must notify CBP of the steps it has taken to prevent a recurrence of the violation.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 12–12, 77 FR 33966, June 8, 2012]

**§163.13 Denial and removal of program certification; appeal procedures.**

(a) *General.* Customs may take, and applicants and participants may appeal and obtain administrative review of, the following decisions regarding the Recordkeeping Compliance Program provided for in §163.12:

(1) Denial of certification for program participation in accordance with paragraph (b) of this section; and

(2) Removal of certification for program participation in accordance with paragraph (c) of this section.

(b) *Denial of certification for program participation*—(1) *Grounds for denial.* Customs may deny an application for certification for participation in the Recordkeeping Compliance Program for any of the following reasons:

(i) The applicant fails to meet the requirements set forth in §163.12(b)(3);

(ii) A circumstance involving the applicant arises that would justify initiation of a certification removal action under paragraph (c) of this section; or

(iii) In the judgment of Customs, the applicant appears not to be in compliance with Customs laws and regulations.

(2) *Denial procedure.* If the Director of the Miami regulatory audit field office determines that an application submitted under §163.12 should not be approved and that certification for participation in the Recordkeeping Compliance Program should not be granted,

the Director shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal of the denial in accordance with paragraph (d) of this section.

(c) *Certification removal*—(1) *Grounds for removal*. The certification for participation in the Recordkeeping Compliance Program by a certified recordkeeper may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant no longer has a valid bond;

(iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;

(iv) The program participant willfully refuses to produce a demanded or requested record;

(v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in §163.12(b)(3); or

(vi) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure*. If Customs determines that the certification of a program participant should be removed, the Director of the Miami regulatory audit field office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (d) of this section.

(3) *Effect of removal*. The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (c)(2) of this section and either no appeal has been filed within the time limit pre-

scribed in paragraph (d)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(d) *Appeal of certification denial or removal*—(1) *Appeal of certification denial*. A person may challenge a denial of an application for certification for participation in the Recordkeeping Compliance Program by filing a written appeal with the Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of denial. The Executive Director, Regulatory Audit, will review the appeal and will respond with a written decision within 30 calendar days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the Executive Director, Regulatory Audit, will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal*. A certified recordkeeper who has received a CBP notice of removal of certification for participation in the Recordkeeping Compliance Program may challenge the removal by filing a written appeal with the Executive Director, Regulatory Audit, U.S. Customs and Border Protection, Office of International Trade, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of removal. The Executive Director, Regulatory Audit, shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 calendar days after receipt of the appeal.